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UNITED STATES PATENT AND TRADEMARK OFFICE  
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MAY 12 2004

Paper No. 12

In re Application of  
Cody Lambert  
Application No. 09/922,529  
Filed: December 11, 2001  
For: Telescopic Universal  
Bed Rack

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: DECISION ON PETITION  
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This is a decision on the petition filed on April 26, 2004 by which petitioner requests withdrawal of the examiner's holding that this application stands abandoned for failure to file a proper and timely reply to the Office action dated August 20, 2003. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is dismissed.

Petitioner alleges that a proper reply to the Office letter in question was timely filed on September 18, 2003 by United States Postal Service "Express Mail." Although the petition indicates that "another copy of the specification letter and drawings of said matter" are enclosed with the petition, no such papers have been received. The only attachments to the petition letter are a copy of the form PTO-90C and attached Notice of Abandonment that were mailed to petitioner on April 6, 2004, a copy of a page from the Internet concerning a search for item, and a copy of a delivery record apparently resulting from that search.

Petitioner's attention is invited to the following Federal regulation governing the filing of correspondence with the Office by "Express Mail", which reads in pertinent part:

37 CFR 1.10. Filing of correspondence by "Express Mail".

(a) Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6(a).

(b) Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the "Express Mail" mailing label number thereon. See paragraphs (c), (d) and (e) of this section.

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(e) Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
- (3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in", a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other

official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

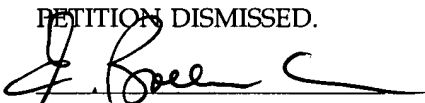
(f) The Office may require additional evidence to determine if the correspondence was deposited as "Express Mail" with the USPS on the date in question.

Without a copy of the item(s) that were alleged to have been mailed and received, the petition cannot be reviewed for compliance with the regulations in order to determine if the petition is grantable. Petitioner should note that there is a requirement that the Office be able to associate the receipt provided by petitioner with the response to the August 20, 2003 letter in this application that petitioner states was filed. This requirement is the reason why the "Express Mail" label number is required to be placed on the correspondence.

Petitioner may file a renewed petition, without fee. The renewed petition must include copies of the correspondence that petitioner alleges to have been filed in response to the Office letter dated August 20, 2003, together with any evidence that will establish that the "Express Mail" item number as set forth on the material that petitioner submitted with the current petition refers to that correspondence. The renewed petition must be filed within two months of this Decision.

The application is being retained in Technology Center 3700 pending the filing of a renewed petition, or other action by petitioner.

PETITION DISMISSED.



E. Rollins-Cross, Director  
Technology Center 3700

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